

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 521

Short Title: Governance of Dep't of Public Instruction. (Public)

Sponsors: Representatives Holloway, Blackwell, Malone, and Elmore (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Education.

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO CHANGE THE MEMBERSHIP OF THE STATE BOARD OF EDUCATION, TO CHANGE THE TERMS OF MEMBERS OF THE STATE BOARD OF EDUCATION, TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION A MEMBER OF AND CHAIR OF THE STATE BOARD OF EDUCATION, TO AUTHORIZE THE GOVERNOR TO APPOINT THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**PART I. AMEND THE CONSTITUTION TO CHANGE THE MEMBERSHIP OF THE STATE BOARD OF EDUCATION, TO CHANGE THE TERMS OF MEMBERS OF THE STATE BOARD OF EDUCATION, TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION A MEMBER OF AND CHAIR OF THE STATE BOARD OF EDUCATION**

**SECTION 1.1.** Section 4 of Article IX of the North Carolina Constitution reads as rewritten:

**"Sec. 4. State Board of Education.**

(1) Board. The State Board of Education shall consist of the Superintendent of Public Instruction, the Lieutenant Governor, the Treasurer, and eleven-10 members appointed by the Governor, subject to confirmation by the General Assembly in joint session, and four members appointed by the General Assembly.

The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, members appointed by the Governor, one shall be appointed from each of the eight educational districts and three-two shall be appointed from the State at large. Appointments made by the Governor shall be subject to confirmation by the General Assembly in joint session.

Of the members of the Board elected by the General Assembly, two members shall be elected by simple resolution by the House of Representatives, and two members shall be elected by simple resolution by the Senate.

Appointments shall be for overlapping terms of eight-six years. Vacancies shall be filled by the appointing or electing authority for the unexpired term. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and to fill vacancies shall not be subject to confirmation.



1 (2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall  
2 be the ~~secretary-chair~~ and chief administrative officer of the State Board of Education."

3 **SECTION 1.2.(a)** G.S. 115C-10 reads as rewritten:

4 **"§ 115C-10. Appointment of Board.**

5 The State Board of Education shall consist of the Superintendent of Public Instruction, the  
6 Lieutenant Governor, the State Treasurer, and ~~11~~10 members appointed by the Governor,  
7 subject to confirmation by the General Assembly in joint session, and four members appointed  
8 by the General Assembly.

9 Appointments made by the Governor shall be subject to confirmation by the General  
10 Assembly in joint session. ~~Not~~ No more than two public school employees paid from State or  
11 local funds may serve as appointive members of the State Board of Education. Education  
12 appointed by the Governor. No spouse of any public school employee paid from State or local  
13 funds and no spouse of any employee of the Department of Public Instruction may serve as an  
14 appointive a member of the State Board of Education. Education appointed by the Governor.  
15 Of the appointive members of the State Board of Education, Education appointed by the  
16 Governor, one shall be appointed from each of the eight educational districts and ~~three~~two  
17 shall be appointed as members at large. Appointments made by the Governor shall be for terms  
18 of ~~eight~~six years and shall be made in four classes.

19 Of the members of the Board elected by the General Assembly, two members shall be  
20 elected by simple resolution by the House of Representatives, and two members shall be  
21 elected by simple resolution by the Senate.

22 Appointments to fill vacancies shall be made by the Governor appointing or electing  
23 authority for the unexpired terms and shall not be subject to confirmation terms. Appointments  
24 made by the Governor to fill vacancies shall not be subject to confirmation.

25 The Governor shall transmit to the presiding officers of the Senate and the House of  
26 Representatives, on or before the sixtieth legislative day of the General Assembly, the names of  
27 the persons appointed by the Governor and submitted to the General Assembly for  
28 confirmation; thereafter, pursuant to joint resolution, the Senate and the House of  
29 Representatives shall meet in joint session for consideration of an action upon such  
30 appointments."

31 **SECTION 1.2.(b)** To achieve staggered terms, one of the initial appointments  
32 made by the House of Representatives shall be for a term of four years, and one of the initial  
33 appointments made by the Senate shall be for a term of four years.

34 **SECTION 1.2.(c)** To implement the reduction in the number of appointments  
35 made by the Governor, when the term of an at-large member appointed by the Governor  
36 expires on March 31, 2015, that vacancy shall not be filled.

37 **SECTION 1.2.(d)** The terms of members appointed or elected on or after April 1,  
38 2015, shall be for six years.

39 **SECTION 1.3.** G.S. 115C-11(a) reads as rewritten:

40 "(a) Presiding Officer. – The Superintendent of Public Instruction shall serve as chair of  
41 the State Board of Education. The State Board of Education shall elect from its membership a  
42 chairman and vice chairman. vice-chair and a secretary. A majority of the Board shall  
43 constitute a quorum for the transaction of business. Per diem and expenses of the appointive  
44 members of the Board shall be provided by the General Assembly. The chairman chair of the  
45 Board shall preside at all meetings of the Board. In the absence of the chairman, chair,  
46 vice chairman vice-chair shall preside; in the absence of both the chairman chair and the  
47 vice chairman, vice-chair, the Board shall name one of its own members as chairman chair pro  
48 tempore."

49 **SECTION 1.4.** G.S. 115C-19 reads as rewritten:

50 **"§ 115C-19. Chief administrative officer of the State Board of Education.**

1 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent  
2 of Public Instruction shall be the ~~secretary-chair~~ and chief administrative officer of the State  
3 Board of Education. As ~~secretary-chair~~ and chief administrative officer of the State Board of  
4 Education, the Superintendent manages on a day-to-day basis the administration of the free  
5 public school system, subject to the direction, control, and approval of the State Board. Subject  
6 to the direction, control, and approval of the State Board of Education, the Superintendent of  
7 Public Instruction shall carry out the duties prescribed under G.S. 115C-21."

8 **SECTION 1.5.** G.S. 115C-21 reads as rewritten:

9 **"§ 115C-21. Powers and duties generally.**

10 (a) Administrative Duties. – Subject to the direction, control, and approval of the State  
11 Board of Education, it shall be the duty of the Superintendent of Public Instruction:

- 12 (1) To organize and establish a Department of Public Instruction which shall  
13 include such divisions and departments as the State Board considers  
14 necessary for supervision and administration of the public school system. All  
15 appointments of administrative and supervisory personnel to the staff of the  
16 Department of Public Instruction are subject to the approval of the State  
17 Board of Education, which may terminate these appointments for cause in  
18 conformity with Chapter 126 of the General Statutes, the State Personnel  
19 System.
- 20 (2) To keep the public informed as to the problems and needs of the public  
21 schools by constant contact with all school administrators and teachers, by  
22 personal appearance at public gatherings, and by information furnished to  
23 the press of the State.
- 24 (3) To report biennially to the Governor 30 days prior to each regular session of  
25 the General Assembly, such report to include information and statistics of  
26 the public schools, with recommendations for their improvement and for  
27 changes in the school law.
- 28 (4) To have printed and distributed such educational bulletins as are necessary  
29 for the professional improvement of teachers and for the cultivation of  
30 public sentiment for public education, and to have printed all forms  
31 necessary and proper for the administration of the Department of Public  
32 Instruction.
- 33 (5) To manage all those matters relating to the supervision and administration of  
34 the public school system that the State Board delegates to the Superintendent  
35 of Public Instruction.
- 36 (6) To create a special fund within the Department of Public Instruction to  
37 manage funds received as grants from nongovernmental sources in support  
38 of public education. Effective July 1, 1995, this special fund is transferred to  
39 the State Board of Education and shall be administered by the State Board in  
40 accordance with G.S. 115C-410.
- 41 (7) Repealed by Session Laws 1995, c. 72, s. 2.

42 (b) Duties as ~~Secretary-Chair~~ to the State Board of Education. – Subject to the direction,  
43 control, and approval of the State Board of Education, it shall be the duty of the Superintendent  
44 of Public Instruction:

- 45 (1) To administer through the Department of Public Instruction, the instructional  
46 policies established by the Board.
- 47 (1a) Repealed by Session Laws 1995, c. 72, s. 2.
- 48 (2) To keep the Board informed regarding developments in the field of public  
49 education.
- 50 (3) To make recommendations to the Board with regard to the problems and  
51 needs of education in North Carolina.

- 1 (4) To make available to the public schools a continuous program of  
 2 comprehensive supervisory services.
- 3 (5) To collect and organize information regarding the public schools, on the  
 4 basis of which he shall furnish the Board such tabulations and reports as may  
 5 be required by the Board.
- 6 (6) To communicate to the public school administrators all information and  
 7 instructions regarding instructional policies and procedures adopted by the  
 8 Board.
- 9 (7) To have custody of the official seal of the Board and to attest all deeds,  
 10 leases, or written contracts executed in the name of the Board. All deeds of  
 11 conveyance, leases, and contracts affecting real estate, title to which is held  
 12 by the Board, and all contracts of the Board required to be in writing and  
 13 under seal, shall be executed in the name of the Board by the ~~chairman~~chair  
 14 and attested by the secretary; and proof of the execution, if required or  
 15 desired, may be had as provided by law for the proof of corporate  
 16 instruments.
- 17 (8) To ~~attend all meetings of the Board and to keep~~ ensure that the secretary  
 18 keeps the minutes of the proceedings of the Board in a well-bound and  
 19 suitable book, which minutes shall be approved by the Board prior to its  
 20 adjournment; and, as soon thereafter as possible, ~~to furnish~~ furnishes to each  
 21 member of the Board a copy of said minutes.
- 22 (9) To perform such other duties as the Board may assign to him from time to  
 23 time."

24 **SECTION 1.6.** G.S. 115C-296.6 reads as rewritten:

25 **"§ 115C-296.6. Composition of board of trustees; terms; officers.**

- 26 (a) The NCCAT Board of Trustees shall be composed of the following membership:
- 27 (1) Two ex officio members: the ~~Chairman~~Chair and the ~~Vice-Chair~~Vice-Chair of the  
 28 State Board of Education and the ~~State Superintendent of Public Instruction~~  
 29 or their designees;
- 30 (2) Two members appointed by the General Assembly upon the  
 31 recommendation of the President Pro Tempore of the Senate;
- 32 (3) Two members appointed by the General Assembly upon the  
 33 recommendation of the Speaker of the House of Representatives; and
- 34 (4) Eight members appointed by the Governor, one from each of the eight  
 35 educational regions.

36 The appointing authorities shall give consideration to assuring, through Board membership, the  
 37 statewide mission of NCCAT.

38 (b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members  
 39 may serve two consecutive four-year terms. The Board shall elect a new chair every two years  
 40 from its membership. The chair may serve two consecutive two-year terms as chair.

41 (c) The chief administrative officer of NCCAT shall be an executive director who shall  
 42 be appointed by the NCCAT Board of Trustees."

43 **SECTION 1.7.** G.S. 143A-44.3 reads as rewritten:

44 **"§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and**  
 45 **duties.**

46 The office of the Superintendent of Public Instruction, as provided for by Article III,  
 47 Section 7 of the Constitution, and the Department of Public Instruction are transferred to the  
 48 Department of Public Instruction. The Superintendent of Public Instruction shall be the  
 49 ~~Secretary~~Chair and Chief Administrative Officer of the State Board of Education, and shall  
 50 have all powers and duties conferred by the Constitution, by the State Board of Education,  
 51 Chapter 115C of the General Statutes, and the laws of this State."



1 the duty of the Governor to appoint another to serve until his successor is elected and qualified.  
2 Every such vacancy shall be filled by election at the first election for members of the General  
3 Assembly that occurs more than 30 days after the vacancy has taken place, and the person  
4 chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7  
5 of the Constitution of North Carolina. When a vacancy occurs in the office and the term expires  
6 on the first day of January succeeding the next election for members of the General Assembly,  
7 the Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the  
8 occurrence of a vacancy in the office for any of the causes stated herein, the Governor may  
9 appoint an interim officer to perform the duties of that office until a person is appointed or  
10 elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy  
11 and is qualified.

12 The time of the election of the Superintendent of Public Instruction shall be in accordance  
13 with the provisions of Article 1 of Subchapter I of Chapter 163 of the General Statutes.

14 The election, term and induction into office of the Superintendent of Public Instruction shall  
15 be in accordance with the provisions of G.S. 147-4."

16 **SECTION 2.4.** G.S. 143A-44.3 reads as rewritten:

17 **"§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and**  
18 **duties.**

19 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~  
20 ~~Section 7~~Section 4(2) of Article IX of the Constitution, and the Department of Public  
21 Instruction are transferred to the Department of Public Instruction. The Superintendent of  
22 Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of  
23 Education, and shall have all powers and duties conferred by the Constitution, by the State  
24 Board of Education, Chapter 115C of the General Statutes, and the laws of this State."

25 **SECTION 2.5.** G.S. 147-4 reads as rewritten:

26 **"§ 147-4. Executive officers – election; term; induction into office.**

27 The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary  
28 of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an Attorney General, a  
29 Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor,  
30 who shall be elected for a term of four years, by the qualified electors of the State, at the same  
31 time and places, and in the same manner, as members of the General Assembly are elected.  
32 Their term of office shall commence on the first day of January next after their election and  
33 continue until their successors are elected and qualified. The persons having the highest number  
34 of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in  
35 votes for the same office, then one of them shall be chosen by joint ballot of both houses of the  
36 General Assembly. Contested elections shall be determined by a joint ballot of both houses of  
37 the General Assembly in such manner as shall be prescribed by law."

38 **SECTION 2.6.** G.S. 147-11.1 reads as rewritten:

39 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

40 ...

41 (b) President of Senate, Speaker of the House and Other Officers. –

42 (1) If, by reason of failure to qualify, death, resignation, or removal from office,  
43 there is neither a Governor nor a Lieutenant Governor to discharge the  
44 powers and duties of the office of Governor, then the President of the Senate  
45 shall, upon his resignation as President of the Senate and as Senator, become  
46 Governor.

47 (2) If, at the time when under subdivision (1) of this subsection the President of  
48 the Senate is to become Governor, there is no President of the Senate, or the  
49 President of the Senate fails to qualify as Governor, then the Speaker of the  
50 House of Representatives shall, upon his resignation as Speaker and as  
51 Representative, become Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation of the office which places ~~him~~ the officer in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally. –

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

...."

**SECTION 2.7.** G.S. 163-1(d) reads as rewritten:

"(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after	Four years, from

1			the first Monday	first day of
2			in November 1968	January next
3			and every four	after election
4			years thereafter	
5	Treasurer	State	Tuesday next after	Four years, from
6			the first Monday	first day of
7			in November 1968	January next
8			and every four	after election
9			years thereafter	
10	<del>Superinten-</del>	State	<del>Tuesday next after</del>	<del>Four years, from</del>
11	<del>dent of</del>		<del>the first Monday</del>	<del>first day of</del>
12	<del>Public</del>		<del>in November 1968</del>	<del>January next</del>
13	<del>Instruction</del>		<del>and every four</del>	<del>after election</del>
14			<del>years thereafter</del>	
15				

16           **SECTION 2.8.** G.S. 163-8 reads as rewritten:

17 **"§ 163-8. Filling vacancies in State executive offices.**

18       If the office of Governor or Lieutenant Governor shall become vacant, the provisions of  
 19 G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by  
 20 death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor  
 21 to appoint another to serve until ~~his~~that officer's successor is elected and qualified: Secretary of  
 22 State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney General,  
 23 Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each  
 24 such vacancy shall be filled by election at the first election for members of the General  
 25 Assembly that occurs more than 60 days after the vacancy has taken place, and the person  
 26 chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that  
 27 when a vacancy occurs in any of the offices named in this section and the term expires on the  
 28 first day of January succeeding the next election for members of the General Assembly, the  
 29 Governor shall appoint to fill the vacancy for the unexpired term of the office.

30       Upon the occurrence of a vacancy in the office of any one of these officers for any of the  
 31 causes stated in the preceding paragraph, the Governor may appoint an acting officer to  
 32 perform the duties of that office until a person is appointed or elected pursuant to this section  
 33 and Article III, Section 7 of the State Constitution, to fill the vacancy and is qualified."

34           **SECTION 2.9.** G.S. 163-278.27(b)(2) reads as rewritten:

35       "(2) In the case of a candidate for nomination or election to the office of  
 36 Governor, Lieutenant Governor, Secretary of State, State Auditor, State  
 37 Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney  
 38 General, State Commissioner of Agriculture, State Commissioner of Labor,  
 39 State Commissioner of Insurance, and all other State elective offices, Justice  
 40 of the Supreme Court, Judge of the Court of Appeals, judge of a superior  
 41 court, judge of a district court, and district attorney of the superior court:  
 42 report to the district attorney of the prosecutorial district in which Wake  
 43 County is located;"

44           **SECTION 2.10.** G.S. 163-278.95 reads as rewritten:

45 **"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

46       The purpose of this Article is to ensure the vitality and fairness of democratic elections in  
 47 North Carolina to the end that any eligible citizen of this State can realistically choose to seek  
 48 and run for public office. It is also the purpose of this Article to protect the constitutional rights  
 49 of voters and candidates from the detrimental effects of increasingly large amounts of money  
 50 being raised and spent in North Carolina to influence the outcome of elections. It is essential to  
 51 the public interest that the potential for corruption or the appearance of corruption is minimized

1 and that the equal and meaningful participation of all citizens in the democratic process is  
2 ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund  
3 as an alternative source of campaign financing for candidates who obtain a sufficient number of  
4 qualifying contributions from registered voters and who voluntarily accept strict fund-raising  
5 and spending limits. This Article is available to candidates for the Council of State offices of  
6 ~~Auditor, Superintendent of Public Instruction, Auditor~~ and Commissioner of Insurance in  
7 elections to be held in 2008 and thereafter."

8 **SECTION 2.11.** G.S. 163-278.96(12) reads as rewritten:

9 "(12) Office. – The Council of State offices of ~~Auditor, Superintendent of Public~~  
10 ~~Instruction, Auditor~~ and Commissioner of Insurance."

11 **SECTION 2.12.** The amendments set out in Sections 2.1 and 2.2 of this act shall be  
12 submitted to the qualified voters of the State at a statewide election to be conducted on  
13 November 4, 2014, which election shall be conducted under the laws then governing elections  
14 in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
15 the General Statutes. The question to be used in the voting systems and ballots shall be:

16 "[ ] FOR [ ] AGAINST

17 Constitutional amendments to make the Superintendent of Public Instruction a  
18 position appointed by the Governor."

19 **SECTION 2.13.** If a majority of votes cast on the question are in favor of the  
20 amendments set out in Sections 2.1 and 2.2 of this act, the State Board of Elections shall certify  
21 the amendments to the Secretary of State. The Secretary of State shall enroll the amendments  
22 so certified among the permanent records of that office. The amendments set out in Sections 1  
23 and 2 of this act shall become effective January 1, 2017, except that there shall be no election  
24 held to fill the office of Superintendent of Public Instruction for a term beginning on or after  
25 December 31, 2016.

26 **SECTION 2.14.** Sections 2.3 through 2.11 of this act become effective only if the  
27 qualified voters approve the constitutional amendments set out in Sections 2.1 and 2.2 of this  
28 act. If the voters approve the constitutional amendments, Sections 2.3 through 2.11 of this act  
29 become effective January 1, 2017. The remainder of this act is effective when the act becomes  
30 law.

### 31 **PART III. EFFECTIVE DATE**

32 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes  
33 law.  
34